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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/772,090	02/03/2004	Margaret H. Baron	HC-P02-060	4153

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EXAMINER

HOWARD, ZACHARY C

ART UNIT	PAPER NUMBER
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1646

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action Before the Filing of an Appeal Brief	Application No. 10/772,090	Applicant(s) BARON ET AL.	
	Examiner ZACHARY C. HOWARD	Art Unit 1646	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 22 January 2010 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
 b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
 (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
 (b) ☐ They raise the issue of new matter (see NOTE below);
 (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
 5. ☐ Applicant's reply has overcome the following rejection(s): _____.
 6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
 7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
 The status of the claim(s) is (or will be) as follows:
 Claim(s) allowed: _____.
 Claim(s) objected to: _____.
 Claim(s) rejected: 70-72 and 75.
 Claim(s) withdrawn from consideration: 73 and 74.

AFFIDAVIT OR OTHER EVIDENCE

8. ☒ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
 12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____.
 13. ☐ Other: _____.

/Bridget E Bunner/
 Primary Examiner, Art Unit 1647

7. For purposes of appeal, the proposed amendments to the claims filed on 1/22/10 will be entered and an explanation of how the amended claims would be rejected is provided:

In the amendments to the claims filed on 1/22/10, claim 70 is amended to include the limitation "which excess vascularization or neovascularization is associated with a tumor". This limits the claimed method to treating a subject suffering from excess vascularization or neovascularization associated with a tumor. In view of the entry of amended claim 70, the rejection of claims 70-72 and 75 under 35 USC 112, first paragraph, as failing to comply with the enablement requirement is withdrawn in part. Specifically, the portion of the rejection directed to the breadth of subjects to be treated by the claimed method other than associated with a tumor (i.e., any form of excess vascularization or neovascularization) is withdrawn (pg 5 of the 10/26/09 Office Action). However, the rejection of claims 70-72 and 75 under 35 USC 112, first paragraph is maintained herein with respect to the claims as amended for the reasons set forth previously (see pg 6-14 of the 10/26/09 Office Action).

In the response filed after final on 1/22/2010, Applicants refer to arguments set forth previously, and further provide six publications (non-patent literature; Exhibits A-F) providing evidence in support of Applicants' arguments. The evidence in the form of the six publications appear to form the basis for the only substantive new arguments by Applicants in response to the rejection set forth previously. As indicated in Section 8 of this advisory action, The evidence in the form of Exhibits A-F filed after a final action, but before the date of filing a Notice of Appeal will not be entered because applicants failed to provide a showing of good and sufficient reasons why (for each Exhibit) the evidence is necessary and was not presented earlier. Therefore, the rejection of claims 70-72 and 75 under 35 USC 112, first paragraph is maintained herein with respect to the claims as amended for the reasons set forth previously (see pg 6-14 of the 10/26/09 Office Action).

8. Applicants' response includes six publications (non-patent literature; Exhibits A-F) providing evidence in support of Applicants' arguments. Applicants' response at pg 5 specifically states that Exhibits A and B provide "further evidence". Applicants indicate that Exhibit C is submitted to "support Applicant's contention that evaluation of embryonic hemoglobin levels can be used to assess vasculogenesis in embryonic cultures" (pg 6). Exhibit D is submitted as "independent post-filing research studies" that "support Applicants' unique findings establishing a link between Shh signaling and vascular growth" (pg 6). Exhibit E and F are submitted to provide evidence that "embryonic culture systems often were used at the filing date of the instant application for the purpose of understanding angiogenesis in later development" (pg 7).

The evidence in the form of Exhibits A-F filed after a final action, but before the date of filing a Notice of Appeal will not be entered because applicants failed to provide a showing of good and sufficient reasons why (for each Exhibit) the evidence is necessary and was not presented earlier.

Continuation of 11. does NOT place the application in condition for allowance because: The request for reconsideration has been considered but does NOT place the application in condition for allowance because the rejection of claims 70-72 and 75 under 35 USC 112, first paragraph is maintained for the reasons set forth above in sections 7 and 8.